


COMMONWEALTH OF VIRGINIA
Department of Environmental Quality
Division of Water Quality Programs
Ellen Gilinsky, Ph.D., Director

SUBJECT: Guidance Memo No. 05-2014
Modifications to the VPA General Permit Regulation for Poultry Waste Management

TO: Regional Directors

FROM: Ellen Gilinsky, Ph.D., Director 

DATE: November 7, 2005

COPIES: Regional Water Permit Managers, Regional Water Compliance Managers, Amy Owens, OWPP Staff, OWCP Staff, Cindy Berndt, Rick Linker

Summary: The VPA General Permit Regulation for Poultry Waste Management was amended on August 31, 2004 to conform to changes in 40 CFR Parts 9, 122, 123, and 412 (as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003). Amendments were also made on June 28, 2005 to conform to Chapter 78 of the 2005 Acts of Assembly (as published October 3, 2005 in the Virginia Register). All of the amendments will become effective on January 1, 2006. This guidance highlights the major changes made to the general permit regulation and general permit content. A copy of the revised general permit regulation is attached to this guidance. A revised general permit and cover letter is also provided for distribution to permitted facilities.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov/water>.

Contact Information:

Questions or comments regarding this topic can be directed to Neil Zahradka at (804) 698-4102, e-mail address nrzahradka@deq.virginia.gov.

DISCLAIMER

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

TABLE OF CONTENTS

BACKGROUND.....	1
I. SIGNIFICANT CHANGES TO THE GENERAL PERMIT REGULATION.....	1
A. EXEMPTION FOR VPDES COVERAGE	1
B. TRANSFER LIMITATIONS	1
C. REQUIREMENT FOR CERTIFIED PLANNERS TO DEVELOP NMPs	2
D. PHOSPHOROUS RATES	2
E. LAND APPLICATION BUFFER ZONES	2
II. TRANSMITTAL OF MODIFIED PERMIT TO FACILITY OPERATORS	2

Modifications to the VPA General Permit Regulation for Poultry Waste Management

Background

The Virginia State Water Control Board approved amendments to the VPA General Permit Regulation for Poultry Waste Management on August 31, 2004 in order to conform to changes in 40 CFR Parts 9, 122, 123, and 412 (as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003). These modifications amended the VPA General Permit Regulation for Poultry Waste Management to exclude poultry operations that would be regulated under the VPDES general permit for CAFOs, and to make the requirements of the VPA and VPDES regulations consistent. The amendments to the regulation were published in the Virginia Register on October 4, 2004, and became effective on November 3, 2004. The regulatory amendments specified that the general permit modifications would not be effective until January 1, 2006. These modifications were made in accordance with a comprehensive APA process, i.e. a TAC was convened, a draft regulation was submitted for public comment, and the draft regulation was modified based on public comment prior to final regulatory approval by the SWCB.

The SWCB also approved amendments to this general permit regulation on June 28, 2005 in order to conform to Chapter 78 of the 2005 Acts of Assembly, and requires that nutrient management plans developed for confined poultry feeding operations follow the Department of Conservation and Recreation's revised criteria for phosphorus after December 31, 2005. Published in the Virginia Register on October 3, 2005, this amendment was exempt from initial public comment under the APA process due to the fact that changes were being made only to maintain statutory conformance.

This guidance was developed to assist in the implementation of the VPA General Permit Regulation for Poultry Waste Management (9VAC 25-630) and State Water Control Law §62.1-44.17:1.1. C.2.d.

I. Significant Changes to the General Permit Regulation

A. Exemption for VPDES coverage

9 VAC 25-630-20 A. specifies that the VPA general permit for poultry waste management may govern only those facilities not covered by a VPDES CAFO permit.

B. Transfer limitations

9 VAC 25-630-50 Part I, Section B.4.c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan (NMP).

This means that if a facility operator has any ownership interest in land to which poultry waste from his permitted facility is applied, the operator must include those fields in the approved NMP. Fields must also be included in the NMP that are under the operational control of either the owner or a legal entity in which the owner has an ownership interest.

For example, Farm One, LLC (owned by John Doe) may not transfer litter to Farm Two, LLC (owned by John and Jane Doe) without including the Farm Two fields in the approved NMP.

Likewise, Farm One, LLC (owned by John Doe) may not transfer litter to a tract of land leased and operated by Litter Apps, Inc. (owned by John and Jane Doe) without including the leased land in the approved NMP.

This specification does not prohibit the operator of a confined poultry feeding operation from

engaging in the business practice of brokering litter. The operator may still transfer litter as a broker, as long as he maintains the broker recordkeeping requirements. The new requirement is that an operator/broker cannot transfer litter to land in which he has an interest in the ownership or operational control without including those fields in the approved NMP.

C. Requirement for certified planners to develop NMPs

9 VAC 25-630-50 Part I, Section B.6. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

Prior to December 31, 2005, an NMP could have been written by someone not certified as a nutrient management planner, as long as the plan was approved by the VA DCR. After this date, all plans must be developed by a certified planner. A plan may still be developed by a private consultant, as long as they are certified.

D. Phosphorous rates

9 VAC 25-630-50 Part I, Section B.9. For all NMPs developed after December 31, 2005, phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written.

Plans developed after December 31, 2005 will be required to meet the requirements of the revised DCR nutrient management regulations (4VAC 5-15). These regulations are currently being revised, and will be finalized prior to December 31, 2005. Specifically, phosphorous application rates will no longer be based solely on soil test recommendations or crop nutrient removal.

E. Land application buffer zones

9 VAC 25-630-50 Part I, Section B.11. The buffer zones at waste application sites shall, at a minimum, be maintained as follows: c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

The previous buffer requirement for land application sites was 50 ft from surface water, regardless of the vegetation present. The new requirement specifies that this buffer must be increased to 100 ft if not in permanent vegetation, or may be reduced to 35 ft if permanent vegetation is present.

Other minor changes were made to the permit language, but items A-E listed above are the most significant.

II. Transmittal of Modified Permit to Facility Operators

Each operator currently covered by the VPA General Permit for Poultry Waste Management should be mailed a new permit. A cover letter summarizing the changes is attached to this guidance, and should accompany the new permit.

A template of the new GP will be sent to each DEQ regional office as an MS Word document. Note that the permit number must be added in two locations – once on the first page and once in the header for the remaining pages of the document.

Permit numbers will not change from the previous version of the permit. As the modification applies to all poultry general permit holders, and is documented in the regulation, it is not necessary to document the modification in CEDS.

[INSERT DATE]

RE: **Modification of VPA General Permit for Poultry Waste Management**

Dear [INSERT NAME OF OPERATOR]:

The Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management has been modified. Enclosed you will find your new general permit that becomes effective January 1, 2006.

Modifications were made on August 31, 2004 in order to conform to changes in federal regulation (40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003). These modifications amended the VPA General Permit Regulation for Poultry Waste Management to exclude poultry operations that would be regulated under the VPDES general permit for CAFOs, and to make the requirements of the VPA and VPDES regulations consistent. This amendment was published in the Virginia Register on October 4, 2004.

Modifications were also made on June 28, 2005 in order to conform to Chapter 78 of the 2005 Acts of Assembly. This modification requires that nutrient management plans developed for confined poultry feeding operations follow the Department of Conservation and Recreation's revised criteria for phosphorus. This amendment was published in the Virginia Register on October 3, 2005.

Please read your new permit and pay special attention to the following specific changes:

- 1) PAGE 3: Part I, Section B.4.c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan (NMP).

This means that if you have any ownership interest in land to which poultry waste from your facility is applied, you must include these fields in your NMP. You must also include fields in your NMP that you don't own, but have an ownership interest in the operational control of those fields.

For example, Farm One, LLC (owned by John Doe) may not transfer litter to Farm Two, LLC (owned by John and Jane Doe) without including the Farm Two fields in the approved NMP.

- 2) PAGE 3: Part I, Section B.6. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

Prior to December 31, 2005, an NMP could have been written by someone not certified as a nutrient management planner, as long as the plan was approved by the VA DCR. After this date, all plans must be developed by a certified planner. Your plan may still be developed by a private consultant, as long as they are certified.

- 3) PAGE 4: Part I, Section B.9. For all NMPs developed after December 31, 2005, phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written.

Plans developed after December 31, 2005 will be required to meet the requirements of the revised DCR nutrient management regulations (4VAC 5-15). These regulations are currently being revised, and will be finalized prior to December 31, 2005. Specifically, phosphorous application rates will no longer be based solely on soil test recommendations or crop nutrient removal.

- 4) PAGE 4: Part I, Section B.11. The buffer zones at waste application sites shall, at a minimum, be maintained as follows: c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

The previous buffer requirement for land application sites was 50 ft from surface water, regardless of the vegetation present. The new requirement specifies that this buffer must be increased to 100 ft if not in permanent vegetation, or may be reduced to 35 ft if permanent vegetation is present.

Other minor changes were made to the permit language, but the items listed above are the most significant. Again, read your new permit and replace the old permit in your files with the new one.

If you have any questions, please contact:

[INSERT REGIONAL OFFICE CONTACT NAME AND ADDRESS]

Sincerely,



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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W. Tayloe Murphy, Jr.

Secretary of Natural Resources

(804) 698-4000
1-800-592-5482

General Permit No: VPG2_ _ _ _ _

Effective Date: December 1, 2000

Modification Date: January 1, 2006

Expiration Date: November 30, 2010

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT AT CONFINED POULTRY FEEDING OPERATIONS

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I - Pollutant Management and Monitoring Requirements and Part II - Conditions Applicable to All VPA Permits, as set forth herein.

PART I - POLLUTANT MANAGEMENT AND MONITORING REQUIREMENTS**A. POLLUTANT MANAGEMENT AUTHORIZATION AND MONITORING REQUIREMENTS.**

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.
2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.
3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

* Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.
6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. OTHER REQUIREMENTS OR SPECIAL CONDITIONS.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be applied in the facility's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:

(1) His name and address,

(2) Written acknowledgement of receipt of the waste,

(3) The nutrient analysis of the waste, and

(4) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

General Permit No: VPG2_ _ _ _ _

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The amount of poultry waste received by the person,
- (2) The date of the transaction,
- (3) The nutrient analysis of the waste,
- (4) The locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code),
- (5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and
- (6) The signed waste transfer acknowledgement.

These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.

c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I subdivision B 4 c shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

General Permit No: VPG2_ _ _ _ _

9. For all NMPs developed after October 1, 2001, and on or before December 31, 2005, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete the training program offered or approved by the Department of Conservation and Recreation within one year of filing the registration statement has been submitted for general permit coverage.

PART II - CONDITIONS APPLICABLE TO ALL VPA PERMITS

A. MONITORING.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. RECORDS.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The name of the individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The name of the individual(s) who performed the analyses;
 - e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and
 - f. The results of such analyses.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. REPORTING MONITORING RESULTS.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on forms provided or specified by the department.
3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.
4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.
5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. DUTY TO PROVIDE INFORMATION.

The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

E. COMPLIANCE SCHEDULE REPORTS.

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. UNAUTHORIZED DISCHARGES.

Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. REPORTS OF UNAUTHORIZED DISCHARGES.

Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. REPORTS OF UNUSUAL OR EXTRAORDINARY DISCHARGES.

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. REPORTS OF NONCOMPLIANCE.

The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
 - a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement.

FOR EMERGENCIES, THE VIRGINIA DEPARTMENT OF EMERGENCY SERVICES MAINTAINS A 24-HOUR TELEPHONE SERVICE AT 1-800-468-8892.

J. NOTICE OF PLANNED CHANGES.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. SIGNATORY REQUIREMENTS.

1. Applications. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

General Permit No: VPG2_ _ _ _ _

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and
- c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. DUTY TO COMPLY.

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. DUTY TO REAPPLY.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. EFFECT OF A PERMIT.

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. STATE LAW.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. OIL AND HAZARDOUS SUBSTANCE LIABILITY.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. PROPER OPERATION AND MAINTENANCE.

The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. DISPOSAL OF SOLIDS OR SLUDGES.

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. DUTY TO MITIGATE.

The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. BYPASS.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.
2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:
 - a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and
 - b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.
3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. UPSET.

A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

General Permit No: VPG2_ _ _ _ _

W. INSPECTION AND ENTRY.

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;
2. Have access to, inspect and copy any records that must be kept as part of permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. PERMIT ACTIONS.

Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. TRANSFER OF PERMITS.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.
2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:
 - a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
 - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

Z. SEVERABILITY.

The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.